

REMARKS

Claims 1-29, 46, 47, 57-82, 85-87, 90-92, 95 and 98-99 are pending and under examination. Claims 30-45, 48-56, 83, 84, 88, 89, 93, 94, 96, 97, 100 and 101 are withdrawn from consideration following a Restriction Requirement imposed by the Office. Claim 1 has been amended herein for clarity in accordance with the Office's suggestions.

Objections and Rejections Withdrawn

Applicants note that the Office's former objection to the abstract and to claims 14, 24, 61, 72, 98 and 99 have been withdrawn.

Applicants note that the Office's former rejection of claims 46, 47 and 97 under 35 U.S.C. 112, second paragraph has been withdrawn.

Applicants note that the Office's former rejection of claims 1-2, 6-8, 16, 46, 63-66, 73, 82 and 90 under 35 U.S.C. 102(a) as allegedly anticipated by Buchholz *et al* (Virology, 1999) has been withdrawn.

Applicants note that the Office's former rejection of claims 1-29, 46-47, 57-82, 85-87, 90-92, 95, 98 and 99 under 35 U.S.C. 102(b) as allegedly anticipated by Murphy *et al* (WO 98/02530) has been withdrawn.

Applicants note that the Office's former rejection of claims 1-29, 46-47, 57-82, 85-87, 90-92, 98 and 99 under 35 U.S.C. 102(e) as allegedly anticipated by Collins (6,364,957) has been withdrawn.

Patentability Under 35 USC § 112

Claims 1-29, 46, 47, 57-82, 85-87, 90-92, 95 and 98-99 are rejected under 35 U.S.C. 112, first paragraph, as for alleged failure to satisfy the written description requirement. Specifically, the Office contends that the specification discloses only a single example of a RNA polymerase elongation factor- the M2 ORF 1 protein of RSV. The Office further asserts that the specification fails to describe a broader genus of polymerase elongation factors by not disclosing what equivalents might exist for the M2 ORF 1 protein.

Applicants respectfully decline to address the merits of the foregoing rejection on the basis that the rejection is rendered moot by the clarifying amendments presented herein. In particular, the rejected claims have been amended to recite that the subject polymerase

elongation factor is an "M2 ORF 1 polymerase elongation factor". On this basis, the rejection is respectfully submitted to be overcome.

Claims 1-29, 46, 47, 57-82, 85-87, 90-92, 95 and 98-99 are rejected under 35 U.S.C. 112, first paragraph, for alleged lack of enablement. In particular, the Office concedes that the specification is enabling for an isolated infectious recombinant RSV wherein the virus comprises the M2 (ORF1) RNA polymerase elongation factor, but asserts that the disclosure does not reasonably enable viruses containing "any RNA polymerase elongation factor".

Applicants respectfully decline to address the merits of the foregoing rejection on the basis that the rejection is rendered moot by the clarifying amendments presented herein. In particular, the rejected claims have been amended to recite that the subject polymerase elongation factor is an "M2 ORF 1 polymerase elongation factor". On this basis, the rejection is respectfully submitted to be overcome.

Double Patenting

Claims 1-29, 46, 47, 57-82, 85-87, 90-92, 95 and 98-99 are rejected for obviousness-type double patenting as allegedly unpatentable over claims 10, 11 and 22 of U.S. Patent No. 6,264,957. The Office notes that the allegedly conflicting claims are not identical, but asserts they are not patentably distinct from each other because the claims of the patent are a species of a genus instantly claimed.

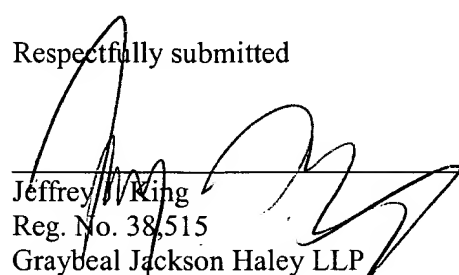
Applicants do not accede to the merits of the foregoing rejection, but note that the rejection will be obviated by submission of a Terminal Disclaimer as proposed by the Office. To advance the instant application to issuance, a Terminal Disclaimer will be filed under separate cover in the instant application in accordance with the Office's suggestions.

CONCLUSION

In view of the foregoing, Applicants believe that all claims now pending in this Application are in condition for allowance and an action to that end is urged. If the Examiner believes a telephone conference would aid in the prosecution of this case in any way, please call the undersigned at 425/455-5575.

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Respectfully submitted



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